

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Thomas & Helene Comunale, Ind. & as TTEE

92-01379

Name of Respondent(s)

Shearson Lehman Hutton, Inc.
Diane B. Davis
Sumner Davis

REPRESENTATION

For Claimants, Thomas and Helene Comunale ("Comunales"): pro se.

For Respondents, Shearson Lehman Hutton, Inc. ("Hutton"), and Diane and Sumner Davis ("Davises"): Brian B. Joslyn, Esq. of Boose Casey Ciklin Lublitz Martens et al.

CASE INFORMATION

Statement of Claim filed on April 22, 1992. Claimants Submission Agreement signed on April 16, 1992.

Respondents' Joint Statement of Answer filed on April 1, 1993. Respondents' Submission Agreement signed on July 8, 1992 by Diane B. and Sumner Davis and June 29, 1992 by Ann Parry on behalf of Shearson Lehman Brothers, Inc..

HEARING INFORMATION

On April 6, 1993, in Fort Lauderdale, Florida, a pre-hearing conference lasting one session was conducted via telephone conference call with arbitrator Spann.

On April 15, 1993, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

Shearson, engaged in fraud, deceit, and omitted material facts, recommended unsuitable investments, engaged in intentional misrepresentation, failed to follow instructions from Claimant, engaged in negligent misrepresentation, breached fiduciary duties, and breached the implied covenant of good faith and fair dealing.

More specifically, Claimant alleged that Haupt purchased the Putnam High Income Government Fund ("Putnam"), notwithstanding Mace's investment objective of safety. Claimant further alleged that after Haupt determined Putnam was not suitable, he recommended and purchased two more "high income" funds, Met Life High Income Tax-Exempt Fund, ("Met Life" fund) and GT Global Government Income Fund ("Global" fund) neither of which were any more suitable than the Putnam fund.

Respondents denied all allegations of wrongdoing and alleged that it was Claimant who, upon the advice of a "neighbor", desired to invest in the Putnam fund and it was Claimant who decided to invest in the Global fund and the Met Life fund. Respondents also alleged that Claimant was provided with all necessary prospectuses and risk disclosure documents regarding the investments.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$28,698.78; pre-award and post-award interest from the date of the original investment at the maximum legal rate, costs and expenses, including all consulting fees, expert witness fees, punitive damages, and other costs the Panel may deem reasonable and just.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the costs of the proceeding be assessed fully against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Shearson and Haupt, are found not liable and, therefore, all claims against them are hereby dismissed. Although the investment complained of was unsuitable for the Claimant, no legally cognizable damages were caused thereby.

2. Respondents' request for costs is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$900.00 (three sessions x \$300.00).
2. Claimant is hereby assessed \$450.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$50.00 payable to the National Association of Securities Dealers, Inc.
3. Respondents, Shearson and Haupt, are hereby assessed \$450.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature:

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Stephen A. LeClair, Esq.
Presiding, Public Arbitrator

Dated:

7/30/73

Date Award Served By The NASD:

8/1/73

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OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees in the amount of \$900.00 (one prehearing conference x \$300.00 plus 2 sessions x \$300.00) have been assessed.

Claimants are hereby assessed \$450.00 for which the NASD shall retain the \$300.00 session deposit previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$150.00 payable to the National Association of Securities Dealers, Inc.

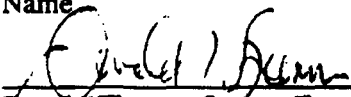
Respondent, Hutton, is hereby assessed \$450.00 payable to the National Association of Securities Dealers, Inc..

The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature

Name


Ronald Thomas Spann, Esq.
(Sole Public Arbitrator)

Public/Industry

Date of Decision:

4/26/93